

Kathryn Ross

BEFORE THE FEDERAL ELECTION COMMISSION

)
) **MUR 7309**
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RESPONSE OF CROWDPAC, INC. TO THE COMPLAINT

Respondent Crowdpac, Inc., by and through undersigned counsel, submits this response to the Complaint in MUR 7309. The Complaint presents no facts to support reason to believe a violation has occurred. It merely contends that Crowdpac acts as a federal political committee. Yet as the Commission already knows through Advisory Opinion 2014-07 (Crowdpac), Crowdpac is a nonpartisan provider of commercial services, not a political committee. Accordingly, the Commission should dismiss this matter and close the file immediately.

I. BACKGROUND

The Commission is already very familiar with Crowdpac and the way it operates from its unanimous approval of a 2014 advisory opinion assessing the applicability of federal campaign finance law to the business. *See generally* Advisory Op. 2014-07 (Crowdpac).

Crowdpac, a for-profit corporation operating exclusively on a commercial basis, has adhered to that advisory opinion. Its business model is to promote grassroots, small-dollar contributor engagement in the political process through its commercial services and the tools available on its website. Crowdpac's proprietary data algorithm objectively maps federal candidates based on publicly available information, including campaign contributions, voting records, and what candidates have said. Users of its site can review information about candidates on dedicated candidate pages, to which every federal candidate has an equal and nonpartisan opportunity to upload certain content. Crowdpac determines which candidate pages are placed where on the website based on its objective, data-driven online political marketplace; candidates

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eliciting the most interest from users are spotlighted as “trending” on Crowdpac’s homepage. In other words, candidates who draw the most interest from users receive the best placement.

Users can contribute to candidates (or make “pledges” to prospective candidates) through the candidate pages on the Crowdpac site. Crowdpac does not process contributions, deposit contributions into a merchant or bank account in its name, or forward contributions to candidate committees. Instead, its processing partner, Democracy Engine, processes contributions made through the Crowdpac site, sending the campaigns all of the funds contributed.¹ In exchange for its services, Crowdpac earns its revenue from users who donate to Crowdpac as part of using its site. See Pricing, <https://www.crowdpac.com/pricing> (last visited Feb. 26, 2018).

II. DISCUSSION

The Complaint’s allegation that Crowdpac acts as a political committee has no basis in law or fact. Crowdpac provides its users nonpartisan commercial services in an effort to earn revenue. The Commission consistently has recognized that commercial service providers like Crowdpac are not political committees or subject to political committee reporting obligations. See Advisory Op. 2016-08 (eBundler.com) at 7; Advisory Op. 2012-22 (skimmerhat) at 9. A political committee “receives contributions aggregating in excess of \$1,000 or . . . makes expenditures aggregating in excess of \$1,000 during a calendar year,” 11 C.F.R. § 100.5(a). Yet, as the Commission has determined, “neither Crowdpac’s services nor its fees are contributions to the recipient political

¹ No contributions are earmarked to federal candidates through Crowdpac’s contribution service. For contributions “pledged” to a prospective candidate, the funds are not debited from the user’s account until the prospective candidate becomes a candidate or begins accepting contributions. At that time, Democracy Engine processes the contribution and sends it to the campaign.

committees," Advisory Op. 2014-07, at 6,² and Crowdpac does not engage in express advocacy or make independent expenditures.

Consistent with its for-profit objective and commercial nature, Crowdpac routinely markets its services online, including posting to its social media pages to highlight the presence of specific campaigns on its website. Contrary to assertions made in the complaint, these efforts are intended solely to promote Crowdpac's business and generate revenue by driving up visitors to – and ultimately contributions made through – its website. Crowdpac's marketing decisions turn on the company's understanding of the marketplace at the time and are purely a matter of business judgment about what messaging will likely resonate with Crowdpac users and prospective users.

Simply put, Crowdpac is not a political committee, and the Complaint offers no information indicating otherwise or suggesting any violation of federal campaign finance law has occurred.

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For the foregoing reasons, Crowdpac respectfully requests that the Commission dismiss the Complaint in this matter and close the file.

² The Complaint erroneously compares Crowdpac to ActBlue, a registered nonconnected political committee. ActBlue, unlike Crowdpac, receives and processes earmarked contributions to federal candidates. *See* Advisory Op. 2006-30 (ActBlue). ActBlue thus had to register as a political action committee to comply with FEC regulations. *See* 11 C.F.R. § 110.6(b)(2)(ii) ("Any person who is prohibited from making contributions or expenditures in connection with an election for Federal office shall be prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees.").

Respectfully submitted,

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Benjamin L. Ginsberg

E. Stewart Crosland

JONES DAY

51 Louisiana Avenue, N.W.

Washington, DC 20001

Tel. (202) 879-3939

bginsberg@jonesday.com

scrosland@jonesday.com

Counsel for Crowdpac, Inc.

1604440091
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